

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CITIZENS' COMMITTEE TO SAVE OUR
CANYONS, a non-profit organization

Plaintiff,

V.

CARLOS BRACERAS, in his official capacity as Executive Director of the Utah Department of Transportation; UTAH DEPARTMENT OF TRANSPORTATION; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; UNITED STATES FOREST SERVICE,

Defendants.

Case No. 2:23-cv-00894-HCN-DBP

STIPULATED DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41, Plaintiff Citizens’ Committee to Save Our Canyons and Defendants U.S. Forest Service; Randy Moore, in his official capacity as Chief of the United States Forest Service (together, “Forest Service Defendants”); Carlos Braceras, in his official capacity as the Executive Director of the Utah Department of Transportation (“UDOT”); and UDOT stipulate to the dismissal of all claims against Forest Service Defendants as follows:

WHEREAS Plaintiff filed its Complaint on December 11, 2023, challenging UDOT’s June 29, 2023 Record of Decision (the “ROD”) approving the Little Cottonwood Canyon Project (the “Project”);

WHEREAS UDOT completed an Environmental Impact Statement (“EIS”) dated September 2022 to evaluate the environmental impacts of alternatives considered to meet the purpose and need of the Project;

WHEREAS U.S. Army Corps of Engineers, U.S. Forest Service, U.S. Environmental Protection Agency, Salt Lake City Department of Public Utilities, and Utah Transit Authority were involved in the development of the EIS as cooperating agencies;

WHEREAS the Memorandum of Understanding between UDOT and FHWA dated May 26, 2022 (the “MOU”), provides that UDOT is solely responsible and liable for the environmental review, consultation and other actions required under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (“NEPA”), without further approval of FHWA, pursuant to 23 U.S.C. § 327;

WHEREAS the ROD states that FHWA will publish a notice in the Federal Register, pursuant to 23 U.S.C. § 139, stating that UDOT has taken final action on permits, licenses, or approvals for the Project and any claims seeking judicial review will be time barred unless filed within 150 days after the Federal Register Notice;

WHEREAS FHWA published a Federal Register Notice on July 14, 2023 stating that UDOT issued the ROD granting licenses, permits, and/or approvals for the Project, and any claim seeking judicial review will be barred unless filed on or before December 11, 2023;

WHEREAS the Federal Register Notice applies to federal agency decisions with respect to the Project as of the issuance date of the notice, July 14, 2023; and

WHEREAS Forest Service Defendants have not adopted the Final EIS, issued a decision approving the Project, or completed any other final agency action related to the Project.

THEREFORE, the parties stipulate as follows:

1. The claims against Forest Service Defendants are dismissed without prejudice, subject to refiling in a new lawsuit only if the U.S. Forest Service issues a final decision related to the Project.

2. The limitations on claims in 23 U.S.C. § 139 do not apply to a future U.S. Forest Service final agency action for the Project unless a notice is published in the Federal Register announcing that the Forest Service has issued a final permit, license, or approval for the Project and invoking the 150-day limitations period.
3. Nothing in this Stipulated Dismissal precludes Forest Service Defendants from relying in whole or in part on the Final EIS for future decisions.
4. Nothing in this Stipulated Dismissal precludes Plaintiff from seeking judicial review of any future U.S. Forest Service final agency action related to the Project, and the Court may consider the full administrative record of that decision, including the Final EIS.
5. Nothing in this Stipulated Dismissal shall be construed to deprive a federal official of authority to revise, amend or promulgate regulations, amend or revise forest plans, or issue final decisions related to the Project. Nothing in this Stipulated Dismissal is intended to or shall be construed to waive any obligation to exhaust administrative remedies; to constitute an independent waiver of the United States' sovereign immunity; to change the standard of judicial review of federal agency actions under the Administrative Procedure Act, 5 U.S.C. §§ 701-06; or to otherwise extend or grant this Court jurisdiction to hear any matter.

Respectfully submitted this 16th day of February, 2024.

/s/ Jessica F. Townsend
Jessica F. Townsend (pro hac vice)
(202) 780-7286
jessica@eubankslegal.com

/s/ William S. Eubanks II

William S. Eubanks II (pro hac vice)
(970) 703-6060
bill@eubankslegal.com
EUBANKS & ASSOCIATES, PLLC
1629 K Street NW, Suite 300
Washington, DC 20006

/s/ Joel Ban

Joel Ban (Utah Bar No. 10114)
801-532-2447
joel@banlawoffice.com
Ban Law Office PC
Post Office Box 118
Salt Lake City, Utah 84110

Attorneys for Plaintiff

PERKINS COIE LLP

/s/ Stephanie Regenold

Stephanie Regenold (Bar No. 18822)
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Tel.: 503-727-2251
sregenold@perkinscoie.com

Stacey Bosshardt (pro hac vice)
700 13th Street NW, Suite 800
Washington, DC 20005
Tel: 202-661-5862
sbosshardt@perkinscoie.com

*Attorney for Utah Department of
Transportation and Carlos Braceras*

TODD KIM

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

/s/ Reade E. Wilson

READE E. WILSON (ME Bar No. 4992)
Trial Attorney

Natural Resources Section
150 M Street NE
Washington, DC 20002
(202) 305-0299
reade.wilson@usdoj.gov

Attorneys for Federal Defendants